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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/837,072      | 04/18/2001  | Viktor Brost         | 655.00955           | 8832             |

7590 10/23/2006

WOOD, PHILLIPS, VanSANTEN,  
CLARK & MORTIMER  
Suite 3800  
500 West Madison Street  
Chicago, IL 60661

EXAMINER

DUONG, THO V

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| ART UNIT | PAPER NUMBER |
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3744

DATE MAILED: 10/23/2006

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/837,072  
Filing Date: April 18, 2001  
Appellant(s): BROST ET AL.

**MAILED**

**OCT 23 2006**

**Group 3700**

Mr. Jeffery N. Fairchild  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 7/24/06 appealing from the Office action mailed 8/11/2004.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

6,311,768

Jamison et al.

11-2001

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

*Claim Rejections - 35 USC § 102*

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Jamison et al. (US 6,311,768). Jamison discloses (figures 1,7, 8 and figures A and B bellow) a radiator core comprising a radiator core (18) defining a front and a rear face thereof and including a plurality of generally rectangular shaped tubes (20) interleaved with layers of fins (22); a collecting tank (26,72) attached to the core in a fluid tight manner to provide fluid communication between the tube (20) and the collecting tank; the tubes each having a pair of side walls (48,62) extending through the core and joined by end walls (50,52) at the front and rear faces of the core. Jamison further discloses (figure 8) that the tubes (20) each terminating at one end thereof in a formed segment wherein the end walls (50,52) of each tube are bifurcated for a distance from one end of the tube and at least one of the side walls (62) is directed away from the other side wall to be adapted to contact a side wall of an adjacent tube in the core; the directed side wall (62) being joined in a fluid tight manner to the contacted side wall of the adjacent tube (by brazing). Jamison further discloses (figure 7) that each collecting tank (26) having walls (70,72) extending over the front and rear faces of the core past bifurcation of the end walls, which start at portion (58), and joined in a fluid tight manner to the end walls of the tubes at a portion (100) along and beyond the bifurcation.

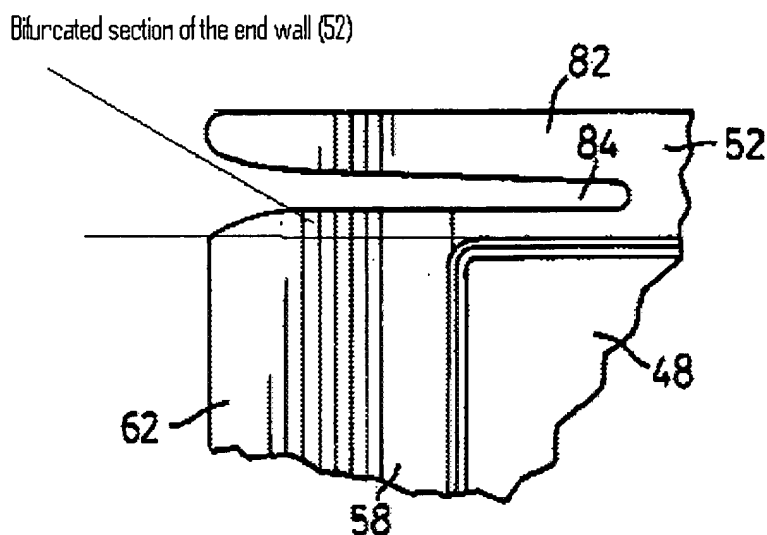


figure A: The modified figure correspondes to figure 5 which shows the bifurcated section of end walls

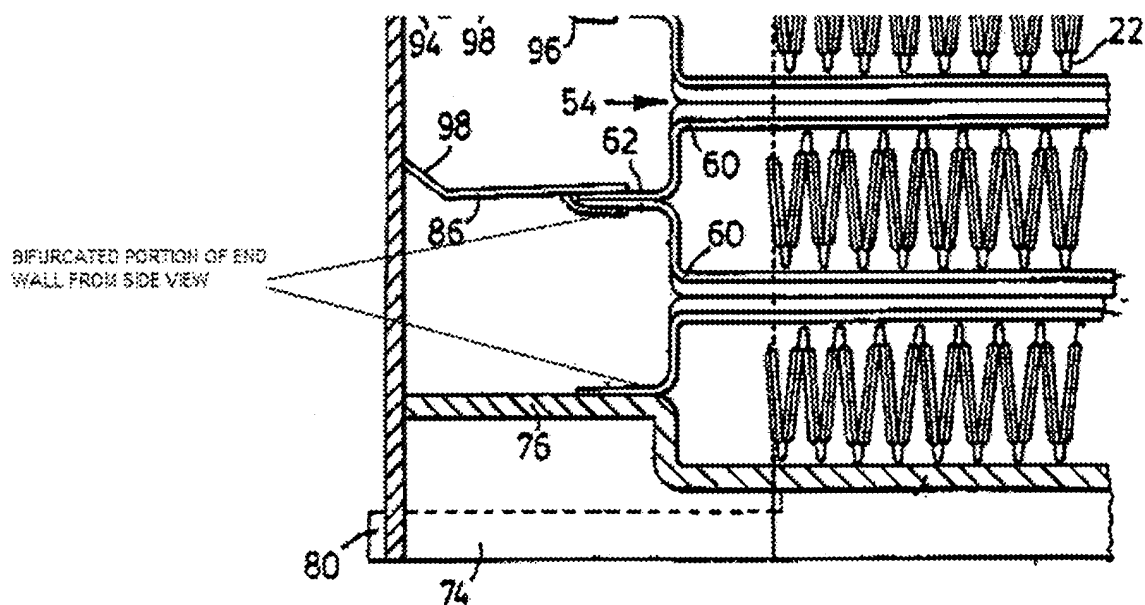


Figure B: The modified figure corresponds to figure 8 with the bifurcated portion shown

**(10) Response to Argument**

Appellant's arguments filed 7/24/06 have been fully considered but they are not persuasive. Regarding issue 1, the appellant argues that the examiner's assertion that the flanges (50,52) are end walls, is improper because the flanges (50,52) is structurally and functionally different from the end walls as described in the present application. In response to appellant's argument that the references fail to show certain features of appellant's invention, it is noted that the features upon which the appellant relies (i.e., two functions of the end walls in second paragraph, page 5 of the brief) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The examiner also disagrees with the appellant's argument because the appellant does not state any structural difference between the end walls (50,52) of the Jamison and the end wall cited in the rejected claims. The term "end wall" indicates a geometrical character of a wall, which is a wall that located at an end or at an edge, and does not inherently to have any function or special structure in the wall itself. Reference to Jamison clearly shows in figure 3 that the walls (50,52) are located at the end of the plates (44,46). Therefore, it is reasonable to one of ordinary skill in the art to interpret walls (50,52) as end walls. In the Argument of the Brief, the appellant also admit that the flanges (50,52) provide a surface for sealing the plate pairs (second paragraph, page 5) and the flanges (50,52) are joined to the walls of the collecting tank (paragraph 2, page 7). In other word, the flanges (50,52), if it were to interpret as end walls, would anticipate the claimed limitation. The issue 1 has been resolved since it is reasonable to one skill in the art to interpret

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the flanges (50,52) as end walls since walls (50,52) are located at the end of the sidewalls (48). Furthermore, for the sake of argument, the end walls (50, 52) can also perform the two functions that the appellant argues on. As admitted by the appellant that the end walls (50, 52) provides a surface to seal the pair of plates, which defines a fluid flow path therein. Therefore, the end walls are capable of defining the fluid flow path. For the rectangular shape function, please see issue 2 bellow.

Regarding the edited figure in the appeal brief, the portions that the appellant indicate as an actual end walls (unnumbered) is just a part of the end walls (50,52) since the end walls (50, 52) extend from the side wall (48) so that the end walls (50, 52) also include the appellant indicated portion.

Regarding issue 2, the appellant argues that reference to Jamison fails to disclose a plurality of generally rectangular shaped tubes because the end walls (50,52) of the tube are not on the same plane with the side walls. The examiner disagrees because if it were the case, then the appellant's tube (16) would not be a rectangular shape either since the end walls (30) of the appellant is also not on the same plane with the side walls' (28). As disclosed by reference to Jamison in figures 1- 4 or 8, the tube (20) has a generally rectangular shape (emphasis added) because one of ordinary skill in the art can see the longer side of the tube and the shorter side of the tube that are substantially perpendicular. The appellant clearly does not call for any planar nor exact rectangular shape limitations in order to require all Jamison's tubes (20) parts to be in the same plane and rectangular to anticipate the claimed invention. For visualization, Jamison's tube (20) formed by end walls (50, 52) and side wall (48) would have the generally rectangular shape viewed from top:

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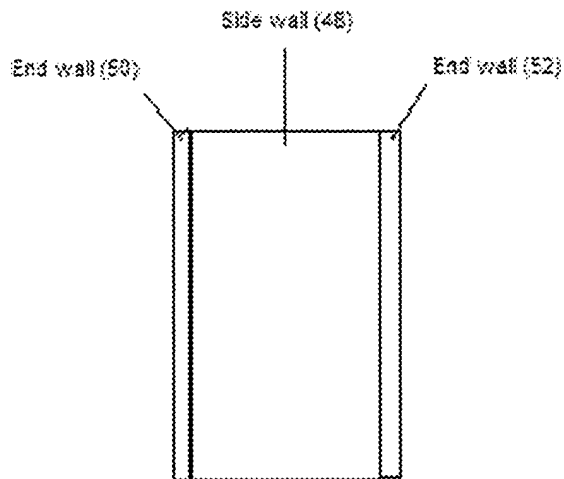


Figure 1A

Despite of the fact that the end walls (50, 52) are not on the same plane with the side wall, one of ordinary skill in the art would conclude that the tube (20) has a generally rectangular shape (See figure 1A above). In any event, the appellant does not disclose any criticality or any unexpected result in the specification for the shape of the tube to be generally rectangular, substantially rectangular or exact rectangular.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.



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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Tho Duong



Primary Examiner

Art Unit 3753



TD

September 20, 2006


Conferees:

Henry Bennet



Henry Bennet  
Supervisory Patent Examiner  
Group 3700

Terrell McKinnon



TERRELL L. MCKINNON  
SUPERVISORY PATENT EXAMINER



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The substitute Appeal Brief filed 7/24/06 has been entered and considered. The attachment is the Examiner's Answer with the corrected heading set forth in the new rules under 37 CFR 41.37©. The substance of the attached Examiner's Answer is the same as the Examiner's Answer sent 11/28/2005.

Tho v Duong  
Primary Examiner  
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